

EXHIBIT B

1 BINGHAM McCUTCHEN LLP
2 DONN P. PICKETT (SBN 72257)
3 GEOFFREY M. HOWARD (SBN 157468)
4 HOLLY A. HOUSE (SBN 136045)
5 ZACHARY J. ALINDER (SBN 209009)
6 BREE HANN (SBN 215695)
7 Three Embarcadero Center
8 San Francisco, CA 94111-4067
9 Telephone: (415) 393-2000
10 Facsimile: (415) 393-2286
11 donn.pickett@bingham.com
12 geoff.howard@bingham.com
13 holly.house@bingham.com
14 zachary.alinder@bingham.com
15 bree.hann@bingham.com
16 DORIAN DALEY (SBN 129049)
17 JENNIFER GLOSS (SBN 154227)
18 500 Oracle Parkway
19 M/S 5op7
20 Redwood City, CA 94070
21 Telephone: (650) 506-4846
22 Facsimile: (650) 506-7114
23 dorian.daley@oracle.com
24 jennifer.gloss@oracle.com
25 Attorneys for Plaintiffs
26 Oracle USA, Inc., Oracle International
27 Corporation, and Oracle EMEA Limited
28

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 ORACLE USA, INC., *et. al.*,
21 Plaintiffs,
22 v.
23 SAP AG, *et al.*,
24 Defendants.

Case No. 07-CV-1658 (PJH) EDL

**PLAINTIFFS' SUPPLEMENTAL AND
AMENDED INITIAL DISCLOSURES**

Date: n/a
Time: n/a
Judge: The Honorable Phyllis J. Hamilton
Courtroom 11, 19th Floor

**CONTAINS INFORMATION
DESIGNATED HIGHLY
CONFIDENTIAL PURSUANT TO
PROTECTIVE ORDER**

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10 **III. COMPUTATION OF DAMAGES¹**

11 In connection with its Third Amended Complaint, Oracle seeks damages against
 12 Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc. (collectively referred to as
 13 "Defendants") resulting from Defendants' reproduction, distribution, public display, and
 14 preparation of derivative works from copyrighted Oracle works, including its software, Software
 15 and Support Materials ("SSMs"), software containing SSMs or other copyrighted works,
 16 fraudulent access to, theft of, and further misuse of Oracle's underlying software applications as
 17 well as SSMs and non-copyrightable support materials, as well as related unfair business
 18 practices, interference with Oracle's business relationships, breaches of contract, and unjust
 19 enrichment at the expense of Oracle. Based on Oracle's investigation to date, Defendants'
 20 actions have resulted in the following categories of harm:

- 21 • Lost, diminished or delayed current and prospective customer revenues and
 22 profits, including as it relates to support and maintenance and software
 23 applications licensing;
- 24 • Harmed current and prospective customer relationships, even where they did
 25 not result in a loss of a customer support contract or software licensing;

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¹ Oracle also seeks injunctive relief.

- 1 • Devaluation of Oracle's intellectual property and other intangible assets and
- 2 Oracle's investment in the development and/or purchase of the same,
- 3 including downward pressure on the value of licenses for, harm to the
- 4 confidential nature of, minimized competitive advantages regarding,
- 5 destruction of Oracle's exclusive exploitation of and remuneration of, and the
- 6 denial of Oracle's licensing rights and revenues regarding the same;
- 7 • Loss of goodwill, including reputational harm and costs associated with
- 8 addressing Defendants' illegal conduct;
- 9 • Harm to Oracle's overall market cap;
- 10 • Harm and impairment to Oracle's customer support websites and underlying
- 11 customer support data, including impaired access to the same by Oracle and
- 12 its legitimate customers, harm to Oracle's control of and the ability to use the
- 13 same by Oracle and its customers for the purposes for which they were
- 14 intended, including to improve Oracle's customer support processes, and harm
- 15 to the functionality of these systems; and,
- 16 • Costs associated with investigating, mitigating (including for example
- 17 lowered prices, time and effort to retain customers or to address reputational
- 18 harm) and litigating against all these activities.
- 19 • The host of other damages attested to by Oracle witnesses, including, e.g.,
- 20 Juergen Rottler, such as the abandonment of existing PeopleSoft customer
- 21 contract step-up renewal price escalations, the early adoption and generous
- 22 terms of Oracle's Lifetime Support and Applications Unlimited programs and
- 23 additional spends on customer support enhancements.

24 Some of the above types of damage include elements that are irreparable in
 25 nature.

26 Oracle is still in the process of gathering and culling down the evidence relevant
 27 to its damages internally, from third parties (e.g., customers) and from Defendants. For instance,
 28 the scope of Defendants' infringement and misuse of Oracle property is still being determined

1 because of the ongoing and late production of data warehouse and other voluminous technical
 2 materials and Defendants' unwillingness to stipulate to exactly what they did. Defendants have
 3 yet to provide requested evidence relevant to Siebel or other Oracle applications – and indeed,
 4 have fought such discovery. While the Parties have agreed on a proposed case extension which
 5 would allow the inclusion of Siebel claims, the Court has yet to rule on the parties' motion.
 6 Accordingly, Oracle does not discuss Siebel-related claims or damages in these disclosures, but
 7 will supplement/amend these disclosures as appropriate if the Court does approve the proposed
 8 case schedule extension. Further, Oracle's ability to calculate its damages obviously is
 9 hampered by not knowing the full scope of the unlawful conduct related to the allegations in
 10 Oracle's Third Amended Complaint. Defendants have not provided relevant requested Safe
 11 Passage information or information about their valuation of IP acquired legally – information
 12 that bears on the value of TN and of TN's IP-theft based business model to SAP, which may be
 13 relevant to what SAP would have paid for a hypothetical license. Moreover, Defendants' use of
 14 the attorney/client privilege to shield the actions and knowledge of SAP and its officers and
 15 directors continues to hamper assessment of punitive damages. Extensive meet and confers on
 16 these issues and other damages-related discovery are ongoing and motions to compel may be
 17 required. In addition, a new round of discovery (including extensive requests relevant to
 18 damages) has just been served by both sides. Thus, there is ongoing relevant discovery that
 19 could and likely will affect assessing and computing appropriate damages.

20 To complete their analysis and computations, Oracle's damages experts are
 21 waiting for the additional factual material yet to be produced and analyzed; moreover, they have
 22 not finalized their methodologies or computations of Oracle's damages. In addition, legal
 23 rulings (such as on Defendants' promised summary judgment motions) may affect the final
 24 damages methodologies and computations. Oracle's damages report and expert opinions will be
 25 provided in accordance with whatever schedule is then in place in the action. Thus the following
 26 description does not constitute Oracle's damages analysis or demand and does not in any way
 27 bind Oracle, but merely provides Oracle's current understanding of the damages here.

28 Oracle has ten causes of action; some of the damages described overlap and

1 different plaintiffs bring different causes of action. Oracle would not seek or be entitled to
 2 duplicate recovery though it will likely seek damages in the alternative.

3 A. In connection with its Copyright Infringement cause of action, Oracle has
 4 alternative measures of its damages available to it under the law. Oracle reserves its right to
 5 elect statutory damages for Defendants' infringement at the appropriate time, but currently does
 6 not envision that it will do so. Rather, it currently seeks from Defendants the value of the
 7 copyrighted material Defendants infringed both through hypothetical license(s) and, in the
 8 alternative, through a lost profits/infringers' profits analysis.

9 Oracle expects to seek to recover damages based on a hypothetical license for the
 10 PSFT/JDE-related infringement by Defendants. Accordingly, the value of the PS/JDE-related
 11 hypothetical license is determined by the value of the rights being licensed or received, as
 12 evidenced by the circumstances at the time (e.g., for Oracle – the fact that Oracle had just paid
 13 significant amounts for the companies, the anticipated value to Oracle of the PSFT/JDE
 14 acquisitions, Oracle's cross-sell and up-sell and service renewal history; for Defendants – the
 15 fact that the acquisitions significantly increased Oracle's threat to SAP, the anticipated value to
 16 SAP of the TN acquisition, the amount that would not have to be expended by Defendants to
 17 legitimately create what they would instead license (which will also be the subject of expert
 18 analysis and relied upon by Oracle's damages experts), SAP's cross-sell and up-sell and service
 19 renewal history). Based on the evidence to date, Oracle anticipates valuing the hypothetical
 20 licenses in the billions of dollars. However, no formal computation has been completed.

21 Oracle's alternative lost profits and infringers' profits analysis for its copyright
 22 infringement claims against Defendants is ongoing and incomplete. It currently will encompass
 23 the lost profits associated with support customers who left Oracle, PeopleSoft or J.D. Edwards
 24 for SAP and TN, service-related discounts required to compete against SAP and TN, and lost
 25 license sales and license discounts associated with competition with SAP and TN. Evidence
 26 relevant to this analysis is contained, for example, in Defendants' multiple internal and external
 27 reports of the revenues taken away from Oracle by TN and by the Safe Passage program, in the
 28 voluminous customer contracts and related files produced by the parties, in the customer

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16 VI. CERTIFICATION

17 Pursuant to Fed. R. Civ. P. 26(g)(1), counsel for Oracle certifies that to the best of
18 its knowledge, information, and belief, formed after an inquiry that is reasonable under the
19 circumstances, these supplemental and amended Initial Disclosures are complete and correct as
20 of the time Oracle makes them.

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DATED: May 22, 2009

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Bingham McCutchen LLP

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By:



Zachary J. Alinder

Attorneys for Plaintiffs

Oracle USA, Inc., Oracle International Corporation,
and Oracle EMEA Limited

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Case No. 07-CV-1658 (PJH) EDL

PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in the
County of San Francisco, California at Three Embarcadero Center, San Francisco, California
94111-4067. I am readily familiar with the practice of this office for collection and processing
of correspondence by U.S. Mail and Electronic Mail, and they are deposited and/or sent that
same day in the ordinary course of business.

7 Today I served the following document:

PLAINTIFFS' SUPPLEMENTAL AND AMENDED INITIAL DISCLOSURES

- 10 (BY ELECTRONIC MAIL) by transmitting via electronic mail document(s) in
11 portable document format (PDF) listed below to the email address set forth below
on this date.

12 (BY MAIL) by causing a true and correct copy of the above to be placed in the
13 United States Mail at San Francisco, California in sealed envelope(s) with postage
14 prepaid, addressed as set forth below. I am readily familiar with this law firm's
15 practice for collection and processing of correspondence for mailing with the
16 United States Postal Service. Correspondence is deposited with the United States
Postal Service the same day it is left for collection and processing in the ordinary
course of business.

Robert A. Mittelstaedt, Esq.
Jones Day
555 California Street
26th Floor
San Francisco, CA 94104
Tel: (415) 626.3939

Tharan Gregory Lanier, Esq.
Jane L. Froyd, Esq.
Jones Day
1755 Embarcadero Road
Palo Alto, CA 94303
Tel: (650) 739-3939

ramittelstaedt@JonesDay.com

tglanier@JonesDay.com
jfroyd@JonesDay.com

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that this declaration was executed on May 22, 2009, at San Francisco, California.

Rosaleen Dora

Rosaleen Doran